

S.R., Appellant

**U.S. POSTAL SERVICE, SAN JUAN
PROCESSING & DISTRIBUTION CENTER,
San Juan, PR, Employer**

Case Submitted on the Record

ALEC J. KOROMILAS, Chief Judge
 JANICE B. ASKIN, Judge
 VALERIE D. EVANS-HARRELL, Alternate Judge

ISSUE

² The Board notes that, following the May 19, 2020 decision, appellant submitted additional evidence to support her claim including the circumstances of her injury. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On January 9, 2020 appellant, then a 53-year-old expediter, filed a traumatic injury claim (Form CA-1) alleging that on January 2, 2020 she tore her left calf muscle when she descended a platform staircase while in the performance of duty. On the reverse side of the claim form the employing establishment checked a box marked “No” in response to whether she was injured in the performance of duty. Appellant stopped work on January 3, 2020.

Appellant submitted a January 2, 2020 medical note signed by an unidentifiable healthcare provider.

In a January 8, 2020 medical note, Dr. Nancy E. Alicea Valentin, a physiatrist, noted that appellant was seen that day and diagnosed strain of unspecified muscle(s) and tendon(s) at lower left leg.

In an April 17, 2020 development letter, OWCP informed appellant that, when her claim was first received, it appeared to be a minor injury that resulted in minimal or no lost time for work and it had now reopened her claim for consideration of the merits. It advised her of the deficiencies of her claim, requested additional factual and medical evidence, and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond. No further evidence was received.

By decision dated May 19, 2020, OWCP denied appellant’s traumatic injury claim, finding that the factual evidence of record was insufficient to establish that she actually experienced the incident or employment factor alleged to have caused an injury, or that she was injured while performing any duty of her employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit

³ *Supra* note 1.

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁸ The employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statements in determining whether a case has been established. An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on January 2, 2020, as alleged.

Appellant filed a traumatic injury claim alleging that she tore her left calf muscle when she descended a platform staircase while in the performance of duty on January 2, 2020. The Board finds that appellant's description of the traumatic incident is imprecise and vague and fails to provide any specific detail or evidence establishing that the January 2, 2020 incident occurred as alleged.¹⁰ The alleged mechanism of injury could not be determined as essential information was not provided.¹¹ Additionally, on the reverse side of the claim form the employing establishment checked a box marked "No" in response to whether she was injured in the performance of duty.

In its April 17, 2020 development letter, OWCP advised appellant of the factual information needed to establish her claim and attached a questionnaire regarding the circumstances surrounding the alleged traumatic injury for her completion. However, appellant did not complete and return the questionnaire in the allotted time period. By failing to respond to the questionnaire, she did not sufficiently explain circumstances surrounding her alleged injury.¹²

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *See J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

⁹ *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹⁰ *See J.B.*, Docket No. 19-1487 (issued January 14, 2020); *W.C.*, Docket No. 18-1651 (issued March 7, 2019); *see also C.M.*, Docket No. 17-0627 (issued June 28, 2017).

¹¹ *J.B.*, *id.* *See also R.V.*, Docket No. 17-1286 (issued December 5, 2017).

¹² *R.B.*, Docket No. 19-1026 (issued January 14, 2020); *M.S.*, Docket No. 18-0059 (issued June 12, 2019); *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

The Board, therefore, finds that appellant has not established an injury in the performance of duty on January 2, 2020, as alleged. Consequently, it is unnecessary to address the medical evidence of record.¹³

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on January 2, 2020, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹³ *J.C.*, Docket No. 19-0542 (issued August 14, 2019); *see M.P.*, Docket No. 15-0952 (issued July 23, 2015); *Alvin V. Gadd*, 57 ECAB 172 (2005); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997) (as appellant failed to establish that the claimed incident occurred as alleged, it is unnecessary to discuss the probative value of medical evidence).